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OFFICE OF PETITIONS

In re Application of :
Guyan et al. : LETTER REGARDING
Application No. 09/305,331 : PATENT TERM ADJUSTMENT
Filed: May 4, 1999 :
Atty Docket No. 10022/246-1 :
:

This letter is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT," filed January 28, 2005, notifying the Office of an error in applicants' favor in the initial determination of patent term adjustment.

The request for correction of the initial determination of patent term adjustment (PTA) is granted. The determination of PTA at the time of the mailing of the Notice of Allowance is ZERO (0) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is ZERO (0) days (including 175 days of Office delay and 180 days of applicant delay). A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 27, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 34 days. Applicants submit no basis for

their assertion that this PTA determination was calculated in error.

A review of the application history reveals that the entry of a period of adjustment of 175 days for Office delay is correct. The notice of allowance mailed October 27, 2004 was mailed, four months and 175 days, after receipt of applicants' response received January 5, 2004. Thus, the period of adjustment is 175 days. See 1.703(a)(2). Moreover, the reduction of 7 days associated with applicants' filing on November 21, 2002 of a response after non-final is correct. See 1.704(b).

Although it is correct that the periods of reduction associated with applicants' filing of responses to the non-final Office action mailed June 30, 2003 total 134 days, the specific allocation is incorrect. The periods of reduction should be 106 days and 28 days, not 103 days and 31 days, as a response was received on January 8, 2004, not January 5, 2004 (the supplemental response was received on February 5, 2004).

Finally, a review of the record reveals that a period of reduction of 39 days should have been entered for applicant delay in replying to the final rejection mailed December 20, 2002. As the amendment filed February 20, 2003 was not in compliance with § 1.113(c), the period for reply to the final rejection mailed December 20, 2002, continued to run. The proper reply, an RCE, was not received in the Office until April 28, 2003. Thus, pursuant to § 1.704(b), any patent term adjustment in this application is subject to a reduction of 39 days for applicant delay from March 21, 2003 to April 28, 2003.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is ZERO (0) days ($175 - (7 + 39 + 106 + 28)$).

As this letter was submitted as an advisement to the Office of an error in Applicant's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Patent Publication for issuance of the application. The patent term adjustment (PTA) indicated on the patent will include any patent term accrued for Office delay in issuing the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

A handwritten signature in black ink that reads "Kery A. Fries". The signature is written in a cursive style with a large, stylized 'K' and 'F'.

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of adjusted PALM calculation